

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal }
of }
SUGAR CREEK PINE COMPANY }

Appearances:

For Appellant: Stanley M. Arndt, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;
John S. Warren, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Sugar Creek Pine Company to proposed assessments of additional franchise tax in the amounts of \$15,776.70 and \$4,022.22 for its taxable years ended May 31, 1952, and May 31, 1953, respectively.

Appellant was organized and began doing business as a California corporation in 1940. As its principal activity Appellant operated a sawmill up to and through the season ended in December, 1949. On June 12, 1950, it leased the mill to Long Bell Lumber Company. On September 12, 1950, Appellant's shareholders authorized the sale of the mill, timberland, and other assets to Long Bell. Under the contract which was entered into between the two companies on October 16, 1950, Appellant agreed to sell and Long Bell agreed to purchase all of the assets of Appellant except cash, accounts receivable, lumber inventory and miscellaneous items of personal property of nominal value. Because the titles to several parcels of timber lands were defective, the agreement provided that the specified purchase price for each parcel was to be paid only as the title was cleared. The purchase price for all assets was \$853,000, payable as follows: assumption of liabilities of Appellant in the approximate amount of \$90,000; payment of \$300,000 cash at or about the time of closing the agreement; delivery of ten promissory notes of Long Bell in the aggregate amount of the balance of approximately \$463,000. All of the notes were to bear interest at 2½ per cent

from the date of closing but Long Bell was not required to deliver them until defects in titles to properties, the purchase price of which they represented, were corrected and the properties transferred.

The board of directors approved the sale on November 7, 1950, and adopted a resolution that Appellant cease business and proceed to liquidate and wind up its affairs. On December 20, 1950, the shareholders elected to wind up and dissolve; the assets to which Appellant held clear title were transferred, the major portion of the sales price thereof was received and the first liquidating dividend was distributed. A certificate of election to wind up and dissolve was filed with the Secretary of State on August 21, 1951.

During the taxable year ended May 31, 1952, Appellant continued with its efforts to perfect titles to most of the remaining assets and cleared the title for, and transferred to the purchaser, property for which it received promissory notes in the amount of \$160,000. At the outset of the taxable year ended May 31, 1953, the titles to two pieces of property remained uncleared; Appellant abandoned its efforts to obtain good title to one parcel which had an agreed sales price of \$20,037.60, but during the year continued as to the other which had an agreed price of \$13,952.27.

In the taxable year ended May 31, 1952, Appellant, in addition to the gain from the sale of assets, received interest income on the purchaser's notes in the amount of \$5,721.35, and incurred expenses of \$6,651.81 for salaries, legal and accounting services, taxes, and interest. Interest on the notes given by Long Bell was also collected in the year ended May 31, 1953, and similar expenses were incurred.

The Franchise Tax Board determined that Appellant was "doing business" during each of the taxable years ended May 31, 1952, and May 31, 1953, and computed the franchise tax liability for each year on the basis of the net income for the respective preceding years pursuant to Section 23151 of the Revenue and Taxation Code, "Doing business" is defined by Section 23101 of the code as

"... actively engaging in any transaction
for the purpose of financial or pecuniary
gain or profit."

Appellant contends that it was not "doing business" during the taxable years in question because prior to those years it had negotiated the sale of its assets and had adopted a resolution to cease doing business and to liquidate and wind up its affairs, and that its activities during those years were in connection with its liquidation.

Section 4605 of the Corporations Code provides that "When a voluntary proceeding for winding up has commenced, the corporation shall cease to carry on business except to the extent necessary for the beneficial winding up thereof." (Emphasis added.) The section contemplates the possible necessity of carrying on business during the winding up period; hence, the resolution to cease doing business could not have had the automatic effect of determining that after the date of its adoption the corporation was no longer carrying on business. Certainly the executory contract of sale would have had no such effect. The sales pursuant to the contract were not completed and the gains thereon were not realized until the properties were transferred following the perfecting of titles.

We have concluded that Appellant's efforts to make the titles to various cf its properties acceptable to the purchaser and the collection of interest on the notes during the taxable years were transactions engaged in "for the purpose of financial or pecuniary gain or profit." The term "doing business" does not necessarily mean a regular course of business; participation in any gain or profit seeking transaction is sufficient, Golden State Theatre and Realty Corporation v. Johnson, 21 Cal. 2d 493; Carson Estate Company v. McColgan, 21 Cal. 2d 516. The title-clearing activities amounted to an exercise of Appellant's corporate franchise and were profit-seeking in motive; for, otherwise, Appellant's failure to obtain good title excused Long Bell from accepting the conveyances and paying certain portions of the agreed purchase price. The fact that Appellant was proceeding under a plan of liquidation does not change the character of the foregoing activities from transactions which amount to "doing business." Hise v. McColgan, 24 Cal. 2d 147.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of Sugar Creek Pine Company to proposed assessments of additional franchise tax in the amounts of \$15,776.70 and \$4,022.22 for the taxable years ended May 31, 1952, and May 31, 1953, respectively, be and the

Done at Sacramento, California, this 30th day of March,
1955, by the State Board of Equalization,

_____ Member

- 23 -